



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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AGUIRRE CALLS '03 PENSION BOARD LETTER REVEALING AND DISTURBING

San Diego, CA: Agreeing with Deputy Mayor Toni Atkin's call for the resignations of San Diego City Employees' Retirement System (SDCERS) chairman, administrator, and in-house legal counsel, City Attorney Michael Aguirre called also for City Manager Lamont Ewell to step down.

The demands by Atkins and Aguirre came after long-withheld documents, released under federal court order, revealed that the SDCERS' outside counsel, Seltzer Caplan McMahon Vitek, concluded in March 2003, that the SDCERS' Board had violated its fiduciary duty when it approved the 2002 pension proposal expanding pension benefits in exchange for allowing the City to underfund the retirement plan.

"The Seltzer Caplan document is disturbing because it mirrors whistleblower Diann Shipione's November 2002, testimony during which she urged Council Members not to support the pension underfunding proposal," said City Attorney Aguirre. "With the exception of Donna Frye, all the then-sitting Council Members voted to ratify the agreement. These Council Members and City Manager Ewell have an obligation to tell the people of San Diego what they knew about the link between the expanded benefits and the pension system underfunding and when they knew it."

The City Attorney also chided Deputy Mayor Atkins for not urging the City Attorney's reinstatement as the chief legal advisor to SDCERS.

Earlier in the day, the City Attorney had briefed the news media on the implications of this document, whose conclusions buttress the on-going investigations of the U.S. Attorney's Office and the criminal complaint filed by the District Attorney's Office this past spring. The conclusions also support the City Attorney's allegations about the underfunding scheme.

As a result of the information revealed in the Seltzer Caplan letter, the City Attorney will file a motion asking Superior Court Judge Charles Wickersham to reconsider his decision to dismiss the City Attorney's lawsuit alleging that City and SDCERS' officials held financial interests in illegal pension benefits that they created as part of the 2002 *quid pro quo* contract. This lawsuit was filed under California's Political Reform Act of 1974.

In addition, the City Attorney stated that he will file a new lawsuit that will allege a conspiracy to cause SDCERS' Board members to breach their fiduciary duty. ###